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| APPLICATION NO.                                     | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/761,961  | 01/20/2004  | Michel Doucet        | 11348-0010-999      | 3887             |
| 20583   | 7590        | 09/23/2005           | EXAMINER            |                  |
| JONES DAY<br>222 EAST 41ST ST<br>NEW YORK, NY 10017 |             |                      | PRICE, CARL D       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3749                |                  |

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/761,961

Applicant(s)

DOUCET ET AL.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09/09/2005 (RCE FILED).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 32-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/09/2005 has been entered.

### Response to Arguments

Claims 1-31 have been cancelled.

Applicant's arguments with respect to newly submitted claims 32-39 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the claims as amended in the submission filed with the Request for Continued Examination on 09/09/2005 applicant states the following:

*"In particular, Applicants respectfully submit that neither the '617 reference nor the '270 reference, either alone or in combination, would teach or suggest a gas cigarette lighter comprising, inter alia, a gas dispensing device having 'a first tubular element fitted into said threaded ring and a second tubular element having a gas outlet duct therein, the second tubular element being disposed at least in part within the first tubular element' and 'said first tubular element passes through the first and second openings of the threaded ring,' as recited in amended Claim 32."*

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Applicant's attention is directed to the detailed rejection of the claims below relying on newly discovered prior art references of **US002743597 (NEWMAN)** and **US003208243 (ZELLWEGER)** along with **JP 02-290270** (of record) to address the limitations of applicant's invention now set forth in the claims. See below.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

**Claims 32-39: Rejected under 35 U.S.C. 103(a)**

Claims 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002743597 (NEWMAN)** (newly cited) in view of **JP 02-290270** (of record), **US005192205A (IWAHORI)** (of record) and **US003208243 (ZELLWEGER)** (newly cited).

**US002743597 (NEWMAN)** shows and discloses a gas cigarette lighter comprising:

- a fuel reservoir (10);
- the reservoir having a top wall (11);

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- a well or hole, passing through the top wall (not referenced; generally to the left of 11 in figure 8) having a bottom end (not referenced);
- a ring (30, 30');
  - o the ring being disposed within the well (hole);
- a gas dispensing device including a first tubular element (31'') having a bottom portion (39'') supporting a microporous membrane (39''), the tubular element being fitted into the ring and passing through the open top and open bottom thereof;
- a second tubular element (41'') having a gas outlet duct (42'');
- an annular sealing gasket (33).

**US002743597 (NEWMAN)** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the lighter tank being made from rigid amorphous polymer material selected from at least one of the group consisting of ABSs and SANs; and
- the microporous membrane is supported within the tubular element by a crimped end of the tubular element.

**US005192205A (IWAHORI)** (i.e. -JP 04-356617) teaches, from the same fuel tank field of endeavor as **US002743597 (NEWMAN)** and of that set forth in applicant's claims, supporting a microporous membrane (9-11) and retaining ring (12) within a tubular element by a crimped end (not referenced) of the tubular element.

**JP 02-290270** teaches, from the same fuel tank field of endeavor as **US002743597 (NEWMAN)**, made forming an aerosol container having gas barrier properties from a rigid amorphous acrylonitrile polymer material.

**US003208243 (ZELLWEGE)** teaches, from the same fuel tank field of endeavor as **US002743597 (NEWMAN)** and of that set forth in applicant's claims, using threaded a threaded connection to attach a nozzle ring member (32) to a fuel tank top wall.

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In regard to claims 32-39, for the purpose of forming an aerosol container having gas barrier properties, it would have been obvious to a person having ordinary skill in the art to modify the container of **US002743597 (NEWMAN)** to be made from a rigid amorphous acrylonitrile polymer material, in view of the teaching of **JP 02-290270**. And, for the purpose for providing a suitable alternative microporous member, it would have been obvious to a person having ordinary skill in the art to modify the microporous member of **US002743597 (NEWMAN)** to include a microporous membrane (9-11) and retaining ring (12) within a tubular element by a crimped end (not referenced) of the tubular element, in view of the teaching of **US005192205A (IWAHORI)** (i.e. -JP 04-356617). In addition, for the purpose of providing an alternative means for attaching the **US002743597 (NEWMAN)** ring fixture (30') to the top wall, it would have been obvious to a person having ordinary skill in the art to utilize a threaded connection, in view of the teaching of **US003208243 (ZELLWEGE)**. Also, in regard to claim 39, since the desired properties of the tank material would depend on numerous design concerns such as the type of fuel used, the size of the container, the relative sizes of each of the lighter components, etc., to form the container/tank of **JP 04-356617** from particularly ABS or SAN materials can be viewed as nothing more than a mere matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

### **Conclusion**

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

### **USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish at the end.

CARL D. PRICE  
Primary Examiner  
Art Unit 3749

cp